

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ORVILLE W. MURPHY,

Plaintiff,

v.

No. CIV 09-0907 MV/LAM

WARDEN TERRY, ET AL.,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S
MOTION TO ALLE[]GE AND PROVE PERJURY BY THE DEFENDANTS
AND TO GRANT RELIEF IN THE ACTION AGAINST SAID
DEFENDANTS (Doc. 18)**

THIS MATTER is before the Court on Plaintiff's *Motion to [A]lle[]ge and [P]rove [P]erjury by the [D]efendants and to [G]rant [R]elief in the [A]ction [A]gainst [S]aid [D]efendants (Doc. 18)*, filed March 15, 2010. In this motion, Plaintiff states that the exhibit attached to the motion "also proves that the defendants is [sic] guilty of perjury because they swear they have no knowledge of the allegation against them." *Id.* at 1. Plaintiff's reference to Defendants' statement appears to come from *Defendant Terry's Answer to Civil Rights Complaint (Doc. 13)* and *Defendant Frawner's Answer to Civil Rights Complaint (Doc. 14)*. The exhibit is a "Detainee Request to Staff Member" form wherein Plaintiff is apparently complaining about the food he received at Otero County Processing Center. Plaintiff asks the Court to "have the defendants explain this document to this Court," and to "grant relief as requested in said action." *Id.* The Court recently entered an order for Defendants to file and serve a *Martinez* report and dispositive motions by April 5, 2010, for Plaintiff to respond by April 22, 2010, and for Defendants to reply by

May 10, 2010. See *Order to File a Martinez Report and Setting Deadlines for Dispositive Motions* (Doc. 17) at 4-5. The Court will consider the exhibit attached to this motion to the extent it is relevant to its consideration of the claims in this case. However, the Court finds that it is premature to order Defendants to explain the exhibit to the Court or for the Court to grant any relief in this case because neither the *Martinez* report nor any dispositive motions have yet been filed or fully briefed. The Court, therefore, **FINDS** that Plaintiff's motion should be denied without prejudice.

IT IS THEREFORE ORDERED that Plaintiff's *Motion to [A]llege and [P]rove [P]erjury by the [D]efendants and to [G]rant [R]elief in the [A]ction [A]gainst [S]aid [D]efendants* (Doc. 18) is **DENIED** without prejudice.

IT IS SO ORDERED.


HONORABLE LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE